IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION
GENERAL LIST

Revised
Not Restricted
Suitable for Publication

Case No. CR-19-01612
Indictment No. K11314091.1

DIRECTOR OF PUBLIC PROSECUTIONS

v

PETER STRATTON

JUDGE:	HER HONOUR JUDGE MORRISH
WHERE HELD:	Melbourne
DATE OF HEARING:	11 December 2019
DATE OF SENTENCE:	18 December 2019
CASE MAY BE CITED AS:	Director of Public Prosecutions v Stratton
MEDIUM NEUTRAL CITATION:	[2019] VCC 2138

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Sentence – obtain financial advantage by deception (two charges); make false document – plea of guilty
Legislation Cited:	*Crimes Act* 1958 (Vic), s82(1), s83A(1); *Sentencing Act* 1991, s464ZF
Cases Cited:	*Director of Public Prosecutions v Josefski* (2005) 13 VR 85; *R v Verdins & Ors* (2007) 16 VR 269
Sentence:	Total effective sentence of two years and nine months' imprisonment with a non-parole period of eighteen months. Section 6AAA declaration: Total effective sentence of four years and three months' imprisonment with a non-parole period of thirty-four months.

APPEARANCES:	Counsel	Solicitors
For the DPP	Ms H Baxter	John Cain Solicitor for Public Prosecutions
For the Accused	Mr P Dunn QC	Pica Criminal Lawyers

HER HONOUR:

1 Peter Stratton: You are before me to be sentenced on two charges of make a false document, Charges 1 and 3, contrary to s83A(1) of the *Crimes Act* 1958 (Vic) and two charges of obtain financial advantage by deception, Charges 2 and 4, contrary to s82(1) of the *Crimes Act* 1958 (Vic). You pleaded guilty when arraigned before me on 11 December 2019.

2 The maximum applicable penalties in respect of each of these offences is ten years' imprisonment.

3 I note, as will soon become apparent, that there is an overlap between the acts constituting Charges 1 and 2 and the acts constituting Charges 3 and 4. I state this now to make it clear that the sentences that I am about to impose today have taken into account the overlap of misconduct so as to avoid double punishment.

Circumstances of offending

4 The circumstances of offending are well set out in the Summary of Prosecution Opening dated 12 November 2019 tendered as exhibit "A". You are to be sentenced on the facts set out in that document, the contents of which you acknowledge are correct. I shall annex a copy of exhibit "A" as attachment "A" to these Reasons for Sentence. Accordingly, a brief summary of the circumstances leading up to and including your offending will suffice for present purposes.

5 Between October 2003 and 3 August 2018, you were employed by the Lyceum Club, first as a general manager, but also, later, as a project manager whilst the Club was undergoing major renovations at its Melbourne premises, which commenced in January 2017.

6 As the general manager of the Club, you were responsible for the financial and operational management of the Club, including budgeting, financial

control, revenue management, contract management and capital expenditure planning. In the first eight years of your employment, you performed your duties diligently and with care. It appears that you earned the trust and respect of the committee and president of the Club.

7 As I mentioned before, the Club underwent an extensive renovation and building project, with work commencing in January 2017. At this point, in addition to your duties as general manager of the Club, you were appointed as overall manager of the project. In this capacity, you were required to manage the project budget, review project-related invoices and co-authorise payment for these invoices. The other co-authorising officer was the president of the Club. During the operation of the project, invoices for renovations or refurbishments were sent directly to you for payment approval and then forwarded to the finance manager for payment.

8 The building works were completed in April 2018. In approximately mid July 2018, the Club received an anonymous tipoff that you had fraudulently obtained furniture from the Club whilst managing the project. As a consequence, the Club engaged auditors to examine renovation documentation and other apparent irregularities. That is the background to Charges 3 and 4, both rolled up charges.

9 Charge 3, making a false document, concerns nine false invoices that you created between 17 February 2017 and 28 July 2017 for the purchase of furniture and household goods to a total value of $96,608.65. The falsity of the documents was that the invoices appeared to refer to goods for the benefit of the Club when in fact the goods ordered were diverted from the Club and were delivered to your residential address.

10 Charge 4, obtain financial advantage by deception, relates to the value of the items that you obtained for your personal benefit after having falsified the documents to deceive the Club into paying for those goods. I have already

referred to the fact that there is an overlap of the misconduct the subject of these two charges. In short, you falsified the documents in order to obtain the financial advantage by that deception. The total financial advantage that you received by falsifying the invoices is $96,608.65. The details of the items obtained are set out in Schedule B of the Indictment.

11 As a result of the audit, you were interviewed by a member of the auditing team on 3 August 2018. You made full admissions to falsifying the invoices. You were dismissed immediately. The matter was then referred to the police for investigation and prosecution.

12 Turning now to Charges 1 and 2, although these were committed first in time, they were not detected until February 2019.

13 In February 2019, an issue arose at the Club that required legal advice. The new general manager of the Club was aware that a similar issue had arisen in the past and knew that the Club had previously obtained and paid for legal advice in 2017. Searches for the advice uncovered irregularities in payments made by the club for services that were not apparently rendered. A further audit was conducted, in the course of which the auditors detected some fifty-two invoices that you falsified to create the deception that the Club owed debts. The Club then paid these debts. In fact, you had manipulated these invoices so as to divert payment into your personal account.

14 Charge 1 is a rolled up charge of making a false document, namely the fifty-two invoices referred to in Schedule A of the Indictment.

15 Charge 2, obtaining a financial advantage by deception, is the financial advantage that you obtained by making the false documents referred to in Charge 1. The total financial advantage you received by falsifying the invoices is $354,820.00.

Apprehension and interview

16 On 22 May 2019, police attended your premises, where they executed search warrants. During the course of the search, police located and seized thirty-nine items of furniture which corresponded to the fraudulent orders that you had placed.

17 You were later interviewed by police. In the course of that interview, you made full admissions about your misconduct. You explained that you were going through a divorce and that you were "used to nice things". You explained that you were under a lot of pressure at work and that you were battling mental illness, alcoholism and drug use. You explained to the police your methodology for falsifying the documents and how you were able to receive payment on the false invoices or accept delivery of the furniture and other household items. You told police that you had purchased the furniture because you felt the Club owed it to you and because of the pressure you were facing. You said that these items were used to furnish your apartment.

18 You told police that you had been purchasing items over a twelve-month period, beginning when you separated from your wife and moved out of the family home. You acknowledged that the property belonged to the Club and that you had no permission to have it.

19 As for the invoices leading to the cash transfers into your bank account, you told police that at the time, you were in the depths of drug use. You capitalised on the opportunity that the building works presented in order to obtain funds to finance your drug habit by falsely representing that consultancy fees were being paid. You said that you thought the number of fraudulent invoices would be five or six and that the total amount defrauded would be $50,000. You said that the money had been used to support your cocaine habit, which involved daily use for the last couple of years. You said that you were spending a few hundred dollars a day on this habit. In addition, you were smoking cannabis.

20 You acknowledged that the co-signer of the invoices, the Club president, never queried the invoices because she trusted you. You said you felt as if you had breached her trust.

Gravity of the offences

21 Your crimes represent serious examples of the offences with which you have been charged. That is so, taking into account:

(i) The breach of trust involved – you abused your position as an employee of the Club in order to perpetrate your crimes;

(ii) The period over which you continued to offend;

(iii) The number of transactions involved;

(iv) The value of the goods obtained and the amount of money of which you gained the financial advantage;

(v) To an extent you felt justified in offending, believing that the Club owed you something for having imposed additional duties and responsibilities upon you during the course of the building project; and

(vi) The goods you obtained were not acquired out of need. Most of the items that you obtained were extravagant and were not necessary to feed, clothe or house you. Nor did you sell any of the items in order to facilitate your drug use. Your counsel, Mr Dunn QC, described the acquisitions as “ridiculous”. There were 39 items, including:

22 2 mirrors;

23 2 vases;

24 A reindeer hide;

25 2 clocks;

26 A coat stand;

27 2 coat hooks;

28 A tea trolley;

29 A limited edition chair valued at $11,000;

30 5 side tables

31 A side board;

32 2 coffee tables;

33 A swan chair;

34 A butterfly chair;

35 A dining chair;

36 4 3D chairs;

37 A dove; and

38 5 lamps.

39 In cases such as these, the dominant sentencing factors are principles of general deterrence, denunciation, condemnation and just punishment.

40 Mr Dunn has frankly and properly conceded that in all the circumstances, the only appropriate response to your offending is the imposition of a term of imprisonment to be served immediately.

41 In a comprehensive plea on your behalf, Mr Dunn, however, identified a number of circumstances which he submitted combine to justify taking a more lenient approach when sentencing you. I now turn to the factors raised in mitigation of penalty.

Guilty plea entered at first opportunity

42 At committal, this matter proceeded by way of straight hand-up brief, when you pleaded guilty at the first committal mention on 14 August 2019. It is accepted by the Crown that you indicated your intention to plead guilty at the first opportunity.

43 I accept you have never sought to test or challenge the Crown case. No witness has ever been required to give evidence against you.

44 When interviewed by police, you made comprehensive admissions.

45 I am satisfied, in all the circumstances, that you indicated your intention to plead guilty to these charges at the first reasonable opportunity. In determining the weight to be given to your plea of guilty, I take into account the following factors:

(i) the timing of your plea;

(ii) you are entitled to a statutory discount because of your plea;

(iii) I accept that your plea is indicative of a level of remorse;

(iv) you have avoided the cost and inconvenience of a trial. You have spared witnesses the inconvenience of giving evidence, both at committal and at trial;

(v) your plea is consistent with your co-operation with the police evidenced in the record of interview; and

(vi) there is enormous social utility involved in your guilty plea.

Factors personal to you

46 You are now aged forty-seven years. You are divorced and have two children. You have no prior convictions and there are no pending matters.

47 In 1990, you studied a Bachelor of Business in Hospitality Management at the William Angliss College. You then worked in various golf clubs in a

managerial position. In 2000, you were married. It appears the marriage was a happy one and you enjoyed the loving support of your wife.

48 In 2003, you became the general manager of the Lyceum Club. By January of 2011, as your counsel describes it, you "went off the rails". You were experiencing financial difficulties. Although the earlier years of employment at the Club gave you a sense of achievement, you gradually became more disillusioned with the job. You felt some of the members of the Club treated you in a disrespectful manner. You attributed this to "being a male working in an all-female environment".[1] You also felt unappreciated and undervalued by the board members of the Club.

49 You committed the first fraudulent transaction, in the amount of $7,700.00, on 24 January 2011. It was not until May of the following year that you made the second false transaction in the amount of $4,400.00.

50 In 2013, you made two transactions in August in the amount of $4,400.00 and $3,300.00 respectively.

51 Approximately one year later, there was a further fraudulent transaction in the amount of $4,400.00.

52 In 2014, your misconduct escalated. There were four transactions that year, nine transactions in 2015, thirteen transactions in 2016, fifteen transactions in 2017 and seven in 2018, the year of your dismissal.

53 Your counsel states that your offending coincided with immense pressure at work and your inability to cope with the stress. Once the building project commenced, you began working long hours, assuming onerous duties without support.

54 Your marriage ultimately fell apart despite valiant efforts on the part of your wife to assist you through your obvious difficulties. She urged you to obtain

1 Exhibit 5, page 4, report prepared by Dr Mathew Barth, psychologist, dated 24 November 2019

professional help. You began drinking to excess and started using cocaine in an effort to self-medicate your way through the additional work burden and the personal pressures and stressors you were under.

55 There is independent contemporaneous medical evidence to support your counsel's submission that you entered a downwards spiral. The medical records of the Toorak Clinic[2] document a longstanding history of depression and anxiety.

56 On 8 January 2016, you saw your general practitioner, Dr Bush, because of your depression and anxiety. You told Dr Bush that you had been "drinking too much to self-treat". You were prescribed anti-depressants. You have been on antidepressants ever since then.

57 The medical records also note a consultation with Dr Bush on 26 April 2016. Your wife had arranged for you to see a psychologist that day. The notes record that you were still struggling, although drinking less. Your doctor discussed a mental healthcare plan to deal with your depression and anxiety. He referred you to a psychologist, Dr Debbie Fooks.

58 Dr Bush's clinical notes also record a consultation on 10 April 2017 when your wife called Dr Bush to express her concern that perhaps you were bipolar.

59 Without referring to each entry in your doctor's clinical notes, it is apparent that you struggled over a considerable period of time with anxiety and depression. You have also struggled with alcohol abuse. It is worth mentioning a note made by Dr Bush about a consultation on 1 August 2018. Dr Bush noted that your alcohol intake remained unchanged, that you never went to see the alcohol counsellor arranged for you and that Dr Bush "counselled and implored [you] to see [the counsellor]".

60 There is also independent contemporaneous evidence from your treating psychologist, Dr Debbie Fooks. You attended for counselling on 26 April

[2] Tendered as exhibit 2

2016, followed by appointments which were rescheduled then cancelled. You subsequently attended a second appointment with Dr Fooks on 28 June 2016. A third appointment was made for 12 July 2016 but was cancelled. At that time, according to Dr Fooks, it was unclear whether you were capable of fully acknowledging the extent of your problematic behaviour. Even so, it would appear that you fully engaged with Dr Fooks. You disclosed a longstanding history of depression which you believed you had managed to conceal from others. You told Dr Fooks of a family history of both depression and excessive alcohol in your immediate and extended family. Dr Fooks reported:

> "It is likely that Peter's concealment of his own emotional difficulties and travails began early in his life in an attempt to bolster and protect his parents' fragile mental health. This dynamic was then replicated in his intimate adult relationships such that emotional difficulties were masked, with alcohol enabling this concealment before subsequently becoming another problem that required concealment.
>
> "Peter's report of his symptoms was consistent with the DSM-V diagnoses of ***Persistent Depressive Disorder*** with comorbid severe (that is, 6 symptoms or more) ***Alcohol Use Disorder***. These diagnoses must be considered preliminary, however, given that the focus of our sessions was not on diagnosis and as such the full breadth of information required to make these definitive diagnoses was not obtained."[3]

61 In a medico-legal report, Dr Mathew Barth, psychologist, confirms that you have a longstanding history of substance abuse and of depression and anxiety. He also noted a history of self-harm. You reported that you would regularly cut your arms and participate in other flamboyant gestures of self-harm, predominantly burning yourself with objects. You described this behaviour to Dr Barth as "punishing myself".[4]

62 I have mentioned that you have enjoyed the loving support of your wife. It is obvious that she made every effort to support you and lead you back onto the right path; however, matters became so intolerable that the marriage ended. The two of you had purchased a family home and upon separation, your wife arranged accommodation for you in a nearby residence so that you could

[3] Exhibit 3, page 3
[4] Exhibit 5, page 5

have regular contact with your children. The separation and ensuing property settlement were arranged amicably between the two of you.

63 When you were finally dismissed from your employment, with the assistance of your father you purchased the goodwill of a coffee shop in Richmond. That business has ceased operation and you are in the process of selling it.

Prospects of rehabilitation

64 It was not until relatively recently that you have engaged in psychological treatment.[5] You have engaged in seven sessions of counselling between 1 August 2019 and 21 November 2019. Your treatment has involved exploring the likely consequences of your offending behaviour to enhance your victim empathy and develop remorse. In those sessions, you recognised that you had betrayed people's trust and you expressed remorse for doing so. Dr Burrows recommends that you have further treatment to consider the long-term implications of your betrayal and your offending more generally. Dr Burrows stated:

> "In summary, Mr Stratton has made some initial progress in offence-specific treatment. However, his rehabilitation remains at an early stage. Further intervention is required for him to address his ongoing alcohol abuse and to develop healthy coping strategies to effectively manage his negative emotions. I can confirm that I am willing to continue treating Mr Stratton if he is at liberty to attend."[6]

65 Having regard to this evidence, I am satisfied that your rehabilitation has commenced but it is not yet complete. Even so, it would appear that your prospects of rehabilitation are good if you continue on with treatment in the future.

***Verdins*[7] factors**

66 I have mentioned that you have been diagnosed with depression. Dr Barth considered that it is highly likely that you were suffering from a persisting depressive disorder at the time of offending and that it is likely that this disorder exerted some influence upon your social reasoning and decision

5 Exhibit 4, report from Mr Geoffrey Burrows, forensic counsellor, dated 25 November 2019
6 Exhibit 4, page 2
7 *R v Verdins & Ors* (2007) 16 VR 269

making:

> "… The clouding of cognitive processing and the cognitive 'load' imposed by depression renders the processes of decision making, generating solutions to problems and weighing alternative options considerably more difficult for the sufferer. There is a tendency to focus on available solutions and to have difficulty instituting needed changes, as well as to have problems developing alternative courses of action to manage problematic situations. As a result, the person tends to behave without exercising their usual level of judgment and rational consideration. When considering Mr Stratton's history of depressive mood disturbances, it is likely that he was labouring under the effects of this condition at the time of his offending.
>
> While Mr Stratton was suffering from the cognitive impacts of his depressive symptoms when he offended, I do not, however, consider that there is any indication to suggest that the effects of his depression ever extended to impairing his ability to understand the wrongfulness of his conduct or that he was not capable of appreciating the consequences of his actions."[8]

67 Dr Barth also considered that your personality traits only narrowly failed to meet full DSM-V diagnosis criteria for a Personality Disorder. Nevertheless, he considered they are indicative of prominent features of borderline and narcissistic personality disorders.[9]

68 Dr Barth considered that you presented with a very fragile self-esteem which is easily influenced by external events in your life. You have, therefore, relied on your achievements in your career to buttress your poor sense of self-identity. Nevertheless, you feel intensely dejected and disappointed when you experience setbacks. Such experiences serve as 'proof' of your low sense of self-worth, contributing to your propensity to seek out external validation to alleviate your feelings of inadequacy.[10]

69 Dr Barth also considered that your drinking behaviour has extended well beyond normal limits and warrants a diagnosis of Alcohol-Use Disorder by DSM-V criteria. He opined that you would currently be specified at the 'moderate to severe' level.[11]

8 Exhibit 5, pages 7-8
9 Exhibit 5, page 8
10 Exhibit 5, page 9
11 Exhibit 5, page 10

70 Dr Barth noted that you were in the very early phases of addressing significant emotional, interpersonal and behavioural issues. He noted that your alcohol use in particular has adversely impacted upon every area of your life. Moreover, your lack of insight into your behaviour and the significance of your problems dictate that you require long-term treatment before you are likely to accomplish sustained abstinence from alcohol and achieve more advanced progress in reducing the risk of recidivism.

71 Dr Barth recommended that you should have mental health treatment, including a prominent focus on developing healthy coping mood management strategies. You also require social skills training to improve your ability to communicate your emotional needs appropriately. Treatment should also focus on addressing your dysfunctional personality traits to the extent possible.

72 Dr Barth also considered that you should have substance abuse treatment. This should include a lengthy period of participating in a highly intensive and closely structured and supervised detoxification program. Dr Barth stated:

> "In essence, the more treatment Mr Stratton is able to access the better for his rehabilitative prospects. Without active participation in the interventions described above, I would be guarded about Mr Stratton's prospects in the community.
>
> "Finally, Mr Stratton continues to suffer with noteworthy symptoms of depression which cause him distress as his plea hearing approaches. His emotional disturbance pre-dates his offending but has been made more intense by the ongoing stress of his prosecution. In light of this, Mr Stratton is likely to experience a lengthy period adjusting to the prison environment. I would anticipate more severe depressive symptoms than is typical of other prisoners who do not suffer with his mental disorder. Mr Stratton would be at risk for experiencing further deterioration in his moods in the period immediately following sentencing and it would be important that he be provided with close professional assistance at that time to prevent any impulsive acts of self-harm."[12]

Restitution

73 Mr Dunn indicated that you would be prepared to make restitution if so ordered by the Court. When first asked about your capacity to pay, through

[12] Exhibit 5, pages 10-11

your counsel, you indicated that there was little prospect of satisfying any such order. When questioned more closely about what happened to your share of the financial settlement made consequent upon your divorce, your counsel obtained further instructions from you. He informed me that you had received 30 per cent of the net value of the matrimonial assets. This represented a payment to you of $600,000. From this, despite your solicitor's advice that you were not required to do so, you paid $250,000 on account in advance to pay for your children's future education. One can't help but wonder whether you did this as a pre-emptive measure designed to defeat a potential compensation order, however I make no such finding given the lack of evidence to support such an inference. You were left with approximately $340,000 of the $600,000 from which you repaid your father the $50,000 which he had lent to you so that you could buy the business. You paid $50,000 to fit out the residence attached to the business and to buy stock and provide working capital. That left you with approximately $240,000 to $250,000. The business is now up for sale and is in the hands of a business broker. You expect to receive $75,000 for the café, from which, I am told, you will have to pay $20,000 to the business broker. You expect to clear $50,000 when the café is sold.

74 At the plea hearing I was told that you now have approximately $95,000 to $100,000 in the bank. You have undertaken to use that money in part satisfaction of a compensation order. Today I was informed that on 13 December 2019 you transferred the amount of $100,000 to a solicitor's trust account in payment of compensation.[13] I propose to mark as Exhibit 9 the receipt, referrable to that payment into the solicitor's trust account.

Sentencing submissions

75 As mentioned earlier, your counsel conceded that the only appropriate disposition requires your immediate imprisonment. Mr Dunn, however, submitted that there should be a greater than usual disparity between the

[13] Exhibit 9

head sentence and the non-parole period to account for your depressive illness and other problems and to reflect your prospects of rehabilitation. The learned prosecutor, Ms Baxter, agreed that a period of imprisonment with a non-parole period is the appropriate response to your offending. She noted the protracted timeframe of your offending, the breach of trust involved and the reasons why you committed the offences. Ms Baxter accepted that you have relatively good prospects of rehabilitation, but noted the caveat provided by Dr Barth to the effect that your lack of insight into your behaviour and the significance of your problems dictate that you require long-term treatment before you are likely to accomplish sustained abstinence from alcohol and achieve more advanced progress in reducing the risk of recidivism. She conceded that jail will be more onerous for you given your poor mental health and that it is possible your condition may deteriorate whist in custody.

Sentences to be imposed

76 I take into account all of the matters personal to you to which I have referred, including your prospects of rehabilitation. I must also take into account such matters as deterrence, especially general deterrence, which is of importance in a case such as this. I am required to take into account the question of the protection of members of the community from you and bear in mind the likelihood of your re-offending. I am called upon by the *Sentencing Act* to manifest the community's denunciation of your conduct and generally to impose a just punishment.

77 Taking all these factors into account, the sentences of the Court are as follows:

78 On Charge 1, make false documents, you are convicted and sentenced to a term of imprisonment of eighteen (18) months.

79 On Charge 2, obtain a financial advantage by deception, you are convicted and sentenced to a term of imprisonment of two (2) years. This will be the base sentence.

80 On Charge 3, making false documents, you are convicted and sentenced to a term of imprisonment of twelve (12) months.

81 On Charge 4, obtain a financial advantage by deception, you are convicted and sentenced to a term of imprisonment of eighteen (18) months.

82 On the question of whether cumulation is required and, if so, how much, I take account of the fact that there is overlap between the conduct the subject of Charges 1 and 2 and the conduct the subject of Charges 3 and 4. Nevertheless, the two sets of offending constitute discrete acts which involved offending of such gravity that total concurrency would fail to do justice. That said, I must also pay regard to principles of totality and proportionality and avoid imposing a crushing sentence.

83 Balancing these matters, I consider it appropriate to order some period of cumulation. I therefore direct that nine (9) months of the sentence imposed in respect of Charge 4 be served cumulatively upon the sentence imposed on Charge 2. That results in a total effective sentence of two (2) years and nine (9) months' imprisonment.

Minimum non-parole period

84 Your counsel has urged that I fix a shorter than usual non-parole period. Although the courts have said from time to time in this regard that there is no two-thirds rule of thumb, a non-parole period may be assessed as unusual by comparison with other cases or having regard to the facts of the particular case. In determining the non-parole period in your case, I am required to take into account the purpose of fixing a non-parole period which is "to provide for mitigation of punishment in favour of [your] rehabilitation through conditional freedom".[14] The fixing of a non-parole period requires discrete consideration of the factors bearing upon the question of when you should be eligible for release. The relevant factors I am required to take into account are:

> "(a) that a non-parole period has a penal element;

[14] See *Director of Public Prosecutions v Josefski* (2005) 13 VR 85, paragraph 43

(b) that, where either general or specific deterrence is important, that objective should not be undermined by an unduly short non-parole period; and

(c) that the prisoner's prospects of rehabilitation are almost always a significant consideration."[15]

85 Taking all these matters into account, including your prospects of rehabilitation, I direct that you serve a minimum period of eighteen (18) months' imprisonment before becoming eligible for parole.

Statement and direction under s6AAA *Sentencing Act* 1991

86 I am required to state the sentence and non-parole period, if any, that would have been imposed in respect of the offences but for the plea of guilty. Therefore, pursuant to s6AAA *Sentencing Act* 1991, and taking into account the matters I have previously referred to as relevant to the weight to be given to your guilty plea, I state that but for your guilty plea, the sentences I would have imposed are as follows:

87 On Charge 1, making false documents, you would have been convicted and sentenced to 27 months' imprisonment.

88 On Charge 2, obtain financial advantage by deception, you would have been convicted and sentenced to three years' imprisonment (the base sentence).

89 On Charge 3, making false documents, you would have been convicted and sentenced to eighteen months' imprisonment.

90 On Charge 4, obtain financial advantage by deception, you would have been convicted and sentenced to 27 months' imprisonment.

91 On the question of cumulation, I would have directed that fifteen months of the sentence imposed on Charge 4 be served cumulatively with the sentence imposed on Charge 2. The total effective sentence would therefore have been four years and three months' imprisonment.

92 I would have directed that you serve a minimum of 34 months' imprisonment

[15] *Josefski*, paragraph 43

before becoming eligible for parole.

93 I direct, pursuant to s6AAA, that the sentences that would have been imposed but for the plea of guilty be noted in the Court's records.

Ancillary Orders

94 I now turn to the ancillary orders. Compensation order, is there a compensation order?

95 MR DUNN: Your Honour, there's an agreement - - -

96 HER HONOUR: It's all been done by private agreement?

97 MR DUNN: An agreement's been reached between the parties.

98 HER HONOUR: All right. I have been told that a private agreement has been reached in relation to repayment of the amount owing to the insurance company who paid out on the claim to the Lyceum Club. You have paid $100,000 towards that debt as I have referred to earlier in these reasons for sentence. The private agreement makes arrangement for the payment of the balance outstanding.

99 I now turn to the forfeiture order which is by consent.

100 MR DUNN: Yes, Your Honour.

101 HER HONOUR: By consent I make the forfeiture order under s33(1) of the *Confiscation Act* 1997. The property referred to in the schedule will be forfeited to the Minister. I take it neither of you require me to read out the schedule?

102 MR DUNN: No, not at all, Your Honour.

103 MS BAXTER: No, Your Honour.

104 HER HONOUR: And I note the correction to item 21.

105 MS BAXTER: Thank you, Your Honour.

106 HER HONOUR: Now order was also to be made by consent for 464ZF is that right?

107 MR DUNN: Yes, Your Honour.

108 HER HONOUR: Do you have the form of the order please?

109 MS BAXTER: That order was e-lodged, Your Honour.

110 HER HONOUR: Sorry?

111 MS BAXTER: The order was e-lodged earlier this week.

112 HER HONOUR: Pursuant to s464ZF(2) of the *Crimes Act* I order that you, Peter Stratton, undergo a forensic procedure for a taking of a scraping from the mouth and/or a blood sample in accordance with sub-division 30A of Part 3 of the *Crimes Act* 1958 until a sample of sufficient standard is obtained for placement on the database.

113 The charges to which this order relates are all charges on Indictment No.K11314091.1. Having considered the seriousness of the circumstances of the forensic sample offences, I am satisfied that in all the circumstances the making of the order is justified for the following reasons. The seriousness of the circumstances of the offending warrant the order. The order is by consent and the granting of the order is in the public interest.

114 Peter Stratton, I must inform you that if, at the time of request, you do not consent to the taking of a mouth scraping under the supervision of an authorised member of the police force then the sample to be taken will be a blood sample and the police may use reasonable force to enable that forensic procedure to be conducted. Do you understand?

115 OFFENDER: Yes, Your Honour.

116 HER HONOUR: Just check that the order is correct.

117 MR DUNN: Thank you, Your Honour.

118 HER HONOUR: In view of the welfare concerns of your client, Mr Dunn, I have taken the liberty of preparing a welfare letter to the prison authorities - - -

119 MR DUNN: Thank you very much, Your Honour. Yes.

120 HER HONOUR: - - - to take care and I propose to provide prison authorities with the medical material and the psychological reports to facilitate all care.

121 MR DUNN: Thank you, very grateful for that. Thank you, Your Honour.

122 HER HONOUR: Is there anything else?

123 COUNSEL: No, Your Honour.

124 HER HONOUR: Thank you very much for your assistance, counsel. You may remove the prisoner.

125 - - -

IN THE COUNTY COURT
OF VICTORIA
AT MELBOURNE

Indictment: K11314091
Court Reference: CR-19-01612

DIRECTOR OF PUBLIC PROSECUTIONS

v.

PETER STRATTON

SUMMARY OF PROSECUTION OPENING UPON PLEA

Date of Document:	12 November 2019
Filed on behalf of:	Director of Public Prosecutions
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BACKGROUND

1. Peter STRATTON, 46 years of age (DOB 21.07.1972), was employed by the Lyceum Club as the General Manager from 2003 until his termination on 3 August 2018 owing to serious misconduct.[16] As the General Manager, the Offender was responsible for financial and operational management of the Lyceum Club, including budgeting, financial control, revenue management, contract management and capital expenditure planning.[17]

2. The Lyceum Club, situated in Ridgeway Place Melbourne, is a women's only club for women interested in the arts, science and contemporary issues.

3. Between 2016 and 2018, the Lyceum Club underwent a renovation and building project worth an estimated $9 Million. The work commenced in January 2017.

[16] Statement BLAKE
[17] Ibid

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4. The Offender acted as the Project Manager for the renovation while retaining his role as General Manager. He oversaw the operational management of the Club as well as the overall management of the project. His role included managing the project budget, review of project related invoices and part authorisation of these invoices for payment.[18]

5. The authorisation and payment approval process for invoices received by the Lyceum Club is managed by the General Manager, which at the relevant time was the Offender and the Club's President. During the project, any invoices for renovations or refurbishment were sent directly to the Offender, approved for payment by the Offender and forwarded to the Finance Manager for payment.[19]

6. The Club's policy was to pay creditors once a month. The Finance Manager would present all relevant paperwork to the Offender and the Club President once a month for final approval and payment were made via the Commonwealth Bank application Commbiz.[20]

7. Renovations were completed in April 2018.

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8. In mid-July 2018, the Lyceum Club received an anonymous tip off accusing the Offender of fraudulently obtaining furniture from the Club during the building project. As a result, the Lyceum Club contracted PRICE WATERHOUSE COOPERS (PWC) to conduct an audit of the renovation and other irregularities.[21]

128 CHARGE 3 and CHARGE 4: The FURNITURE

9. As part of the audit, PWC and the Finance Manager conducted a review of the fixed asset register. The fixed asset register is a computerised list of every asset held by the Club and is updated monthly. PWC and the Finance Manger attempted to physically locate and count

18 Ibid
19 Statement NALBANTICH
20 Ibid
21 Ibid

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every item of furniture purchased during the building project. Multiple assets were unaccounted for and could not be located.[22]

10. In the process of conducting the audit, PWC and the Finance Manager identified anomalies on nine invoices. On request, the original invoices were supplied to the Club by the relevant suppliers. The Finance Manager compared both the original invoices and the invoices held by the Lyceum Club.

11. This audit revealed that the invoices held on the Club's file had been manipulated to reflect a different delivery address and furniture items purchased. On the altered invoices, the Lyceum Club was listed as the delivery address, on the original invoices provided by the suppliers, the delivery address was listed as 6/36 Grandview Grove, Prahran. That address was the private residential address of the Offender. The invoice reference numbers had also been altered.[23]

12. The Fraudulent invoices are listed at Schedule B of the indictment. The invoices are dated from 17 February 2017 to 28 June 2018. The invoices related to purchases of high-end furniture from various furniture boutiques and included amongst other things, the purchase of items such as:

    - a tea trolley valued at $2,972.00[24]
    - a dining chair valued at $2,777.00[25]
    - a coat stand valued at $7,345.00[26]
    - a cushion valued at $600.00
    - a wall clock valued at $770.00[27]
    - a limited-edition chair valued at $11,000.00[28]

13. The total amount of the nine furniture invoices including GST is calculated at $96,608.65.

22 Ibid
23 Ibid
24 EX 64 – Invoice Luke Furniture
25 EX 65 – Invoice Great Dane Furniture
26 EX 66 – Invoice Living Edge
27 EX 66 – Invoice Living Edge
28 EX 69 – Cult Furniture Invoice

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14. The invoices were paid in full by the Lyceum Club. The Club did not receive any of the furniture items listed in the fraudulent invoices. The items were delivered to the Offender's home address.

15. As a result of the audit, the Offender was interviewed by PWC on 3 August 2018 where he made full admissions to altering the invoices. The Offender was immediately dismissed.

16. On 16 October 2018, the LYCEUM CLUB referred the matter to police.

17. On 20 February 2019, the Offender made a personal payment of $5,953 plus GST to CULT FURNITURE as the remaining balance on the order for a "Carl Hansen desk". The Offender had fraudulently placed an order for the desk in the name of the Lyceum Club who had paid the deposit amount of $6,528.50 on 28 June 2018.[29]

18. The Offender requested CULT FURNITURE deliver the desk to his home address. This order had already been cancelled by the Lyceum Club and as such the desk was not delivered.

129 **CHARGE 1 and CHARGE 2: BRT CONSULTING INVOICES**

19. In February 2019, the SHERATON HOTEL who occupy an adjoining property to the Lyceum Club, issued a notice to the Club of their intention to upgrade storm water drains. Part of this upgrade would include building a gutter that would cross the airspace with the Lyceum Club.[30]

20. The Current General Manager of the Lyceum Club, Susan BLAKE was aware that a similar issue had arisen in the past with the SHERATON HOTEL and was of the view that the Club had received legal advice in 2017.[31]

21. On 3 April 2019, BLAKE reviewed old Club creditor invoices from 2017/18 to see if she could identify the lawyer through an invoice. BLAKE located a fixed fee invoice

29 Detailed at Transaction 7 – SCHEDULE B
30 Statement BLAKE
31 Ibid

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for $8,800 from BRT Consulting Pty Ltd which related to "Lyceum Club – Review of Storm Water Advice" dated 8 September 2017. The invoice was made out from the director of BRT Consulting, a Mr. W M THOMPSON.[32]

22. On contacting BRT, BRT could not locate any invoice which related to the "review of storm water advice". Additionally, BLAKE was informed that W M THOMSPON had not worked at BRT for several years and storm water advice was not something that BRT usually consulted on.[33]

23. BLAKE located another 14 invoices from BRT for various fixed fee assignments. The additional invoices were dated from January 2011 to June 2018.

24. The current director of BRT subsequently reviewed the 15 invoices located by BLAKE and advised that they were not legitimate invoices and BRT consulting had not received any funds in relation to the invoices. He also confirmed that W M THOMPSON had retired in 2015 and the date of BRT's last legitimate invoice for work performed for the Lyceum Club was dated 7 October 2009.[34]

25. The original legitimate invoice dated 7 October 2009, was compared to the 15 invoices identified as fraudulent. The first fraudulent invoice identified by BLAKE dated 24 January 2011 contained a different bank account and BSB to the original invoice.
BLAKE also observed formatting differences. The invoice had been initialled by the Offender, together with a handwritten notation, "capital refurb stage 4B". The associated payment report for the invoice had been initialled by the Offender and the then Club President.[35]

26. The subsequent invoices did not contain any reference to a bank account number or BSB, however all subsequent payments were made into the same bank account as listed on the invoice dated 24 January 2011. The subsequent invoices contained further abnormalities including different telephone numbers and invoice numbering systems.[36]

32 Ibid
33 Ibid
34 Statement DINNING
35 Statement BLAKE
36 Ibid

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27. On 16 April 2019, the Lyceum Club again engaged PWC to undertake a forensic audit. The audit analysed accounts dating back to 2006.

28. As a result of the analysis, 52 fraudulent invoices for BRT were identified. The invoices spanned from 24 January 2011 to 29 June 2018. A summary of those invoices is identified at Schedule A.

29. The total amount of the 52 fraudulent invoices from BRT consulting is calculated at $354,820.00

30. A review of the bank account number and BSB on the fraudulent invoice dated 24 January 2011, revealed that this account was held in the name of the Offender and his ex-wife. The Lyceum Club transferred payment for the 52 fraudulent invoices into this bank account.[37]

130 **SEARCH WARRANT/ ARREST and RECORD OF INTERVIEW**

31. On Wednesday 22 May 2019, police attended at the Offender's address in Richmond and executed search warrants at the Offender's residential address and a café owned and run by the Offender.

32. Police located and seized 39 items of furniture which corresponded to fraudulent orders made by the Offender.

33. The Offender was interviewed and made full admissions including:

    a. He was solely responsible for the fraudulent invoices. He was the General Manager of the Club and he purchased items through the club for himself. He explained that he was going through a divorce and he was used to nice things. Initially he bought items through the Club's account to get a discount, however he subsequently bought items he did not reimburse the Club for (Q/A33 – 35);
    b. He told police he was under a lot of pressure from work, including battling mental illness, alcoholism and drug use (Q/A36);

[37] Statement D/S/C NICHOLDS

c. He explained that he would place an order and then falsify the invoice so the club would pay for the item, but he would receive the goods. He would edit the invoice in Adobe Acrobat, changing the invoice from his personal name and address to the Club's. He would then submit the invoice for payment and the items would be delivered to his home address (Q/A 39 – 49);
d. The Offender and another committee member would sign the invoice for payment (Q/A 66);
e. He purchased furniture and he felt that he was owed it by the Club due to the pressure he was facing. He used the items to furnish his apartment (Q/A 68);
f. He had been purchasing items for a 12-month period beginning when he moved out of his family home (Q/A 77);
g. He used his personal MacBook to alter the invoices (Q/A282);
h. He admitted the furniture items located at his premises were items the subject of the fraudulent invoices (Q/A 303);
i. He believed the property belonged to the Club and he did not have permission to have it (Q/A317 – 319);
j. His father had offered to pay the Club back for the property (Q/A 320);
k. With respect to the BRT fraudulent invoices, the Offender stated that in the depths of his drug use he was creating invoices and the payments were going to him and into his bank account (Q/A374);
l. He saw an opportunity to cover his drug habit while consultant fees were going through. He altered the bank details in the system so that money was paid into his account (Q/A 377 – 378);
m. He thought the total number of fraudulent invoices would be 5 or 6 and that the total would be $50,000 (Q/A381);
n. The money went to support his cocaine habit. He was using cocaine daily for the last couple of years and was spending a few hundred dollars a day. He smoked weed as well (Q/A 432 – 434);
o. The president who was the co-signer of the invoices never queried the invoices because she trusted him. He felt as if he had breached their trust (Q/A463);

34. The Offender was charged and bailed.

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Maximum Penalties

Offence	Maximum penalty
Obtain Financial Advantage by Deception	10 years
Make False Document	10 years

Pre-Sentence Detention

35. NIL

Plea of Guilty

36. The Offender pleaded guilty at the first committal mention on 14 August 2019.

37. Section 6AAA of the *Sentencing Act 1991* applies.

Criminal History

38. The offender has no criminal history

Ancillary Orders

39. The Prosecution will make an application for a 464ZF Order. Notice will be given of any further ancillary orders.

Victim Impact Statement

40. It is intended that a Victim Impact Statement is to be tendered.

Mandatory Provisions

41. As the value of the financial advantage obtained is $50,000 or more, the obtain financial advantage offences are continuing criminal enterprise offences: *Sentencing Act 1991* s 6H(1), item 1(e) of Schedule 1A.

42. However, as the Offender is not guilty of three criminal enterprise offences, he is not considered a 'continuing criminal enterprise offender': *Sentencing Act 1991* s6H.

Procedural Chronology

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Date	Event/hearing	Outcome
22 May 2019	Arrested/ Interviewed /Charged	
28 May 2019	Filing hearing	
14 August 2019	Committal Mention	Resolved

H BAXTER
Counsel for the Director of Public Prosecutions

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